STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 2, 2006
v	No. 258068 Wayne Circuit Court
HENRY JAMES BETHUNE, Defendant-Appellant.	LC No. 03-012032-01

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of third-degree criminal sexual conduct ("CSC III"), MCL 750.520d(1)(b) (sexual penetration through force or coercion). He was sentenced to concurrent prison terms of 10 to 15 years for the offenses. We affirm.

I. Facts

Defendant was convicted of sexually assaulting a 38-year-old woman on the night of October 1, 2, or 3, 2003, in the area of Mack and Cadillac in Detroit. The woman admitted that she was prostituting that night. She testified that defendant drove up to the corner where she was standing, asked her if she was "dating," and picked her up. The two drove to another block, near Holcomb and Mack, in defendant's pick-up truck. Defendant asked her for her prices and then, after looking "as if he was going in his pocket," he pulled out a knife from under his left leg and held it to her throat. He threatened to cut her if she moved or screamed. He told her to perform oral sex or he would kill her. She did so only because she felt forced; she testified that it was nonconsensual. She asked to get out of the truck and he said, "no." He told her to get on top of him and the two engaged in nonconsensual vaginal sex. He asked her if she had any money. She said, "no," and asked to get out of the truck. After he talked to her for a minute, he leaned across and opened the door for her to get out. He then pushed her with his foot.

She did not report the incident to police that night. Rather, on October 8, 2003, she saw defendant again when she went into a gas station on the same corner, at Cadillac and Mack, to buy cigarettes. Defendant came inside and tried to "pick [her] up" by asking if she needed a ride. He was driving the same truck. She "froze for a minute," and thought that he did not remember her. He left the gas station. After the victim left the gas station, she saw defendant drive by as she was standing at a bus stop. She saw a police patrol car drive by in the other direction, and

she flagged it down and pointed out defendant's truck to the officers, saying: "that's the truck of a guy who raped me." The officers pulled the truck over and arrested defendant.

II. Admission of Defendant's Prior Statement to Police

Defendant first argues that the trial court erred by admitting a highly prejudicial statement that defendant made to police after his arrest. He claims that the statement was not made voluntarily, but was coerced by police. In the statement, defendant admitted that he had regularly picked up prostitutes and robbed them of their money in the past. However, he maintained that he never used a weapon and that he never sexually assaulted them. Rather, on some occasions, he "strong-arm[ed]" them into returning the money after the sexual activity took place. At a hearing before trial, the court denied defendant's motion to suppress the statement.

A. Standard of Review

When reviewing a motion to suppress an involuntary statement, we review de novo the ultimate legal decision whether the statement was voluntary and review the trial court's underlying findings of fact for clear error. *People v Walters*, 266 Mich App 341, 352; 700 NW2d 424 (2005); *People v Snider*, 239 Mich App 393, 417; 608 NW2d 502 (2000); see also *People v Sexton*, 461 Mich 746, 752; 609 NW2d 822 (2000). "A finding is clearly erroneous when, although evidence supports it, this Court is left with a firm conviction that the trial court made a mistake." *Walters, supra* at 352, quoting *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997). In reviewing a trial court's findings, we accord deference to its credibility determinations and will not substitute our own judgments of witnesses' credibility. *Id.* Finally, the prosecution has the burden of proving voluntariness by a preponderance of the evidence. *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830 (1991).

B. Analysis

Statements made during a custodial interrogation are generally inadmissible unless the accused "voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *Snider, supra* at 417. A court evaluates the voluntariness of a statement based on the totality of the circumstances. *Id.* Factors which should be considered include, but are not limited to, the following:

> the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); see also *Snider, supra* at 417-418.]

Here, the parties do not dispute that many of these factors are irrelevant and, furthermore, defendant admitted that he was read his rights and that he generally understood his rights. Defendant also initialed the statement where it declared that he had been advised of his rights, that he wished to make a voluntary statement, that he had not been threatened or coerced, and that he had not been denied food, water, or access to an attorney. Nonetheless, he claims that the statement was not made voluntarily, but was coerced with threats that defendant would be charged with the murders of several prostitutes in the neighborhood where he was arrested if he did not cooperate by signing the statement.

The record reveals that the Detroit Police Sex Crimes Unit considered defendant a suspect in three sexual assault investigations. The Homicide Section was separately investigating at least ten murders of prostitutes who were all black women in their early to mid-40s who had died from strangulation or blunt force trauma in the neighborhood where defendant was arrested. Defendant testified that, when he was pulled over, he was told that he fit the description of a rapist and he was also asked, "Why did you kill those girls?" He heard one officer say, "We finally got him." Defendant further testified that, during the booking process, five or six officers referred to him as "the murderer."

His first interview, during which the contested statement was made, was with Officer James Wiencek of the Sex Crimes Unit on October 8, 2003, at 4:30 a.m., after defendant's arrest. Defendant attested that Wiencek told him he was being charged with "serious murder and rapes," and that he would get life in prison if he was found guilty for first-degree murder. He stated that Wiencek asked him about the murder victims and told him he would be speaking with a homicide detective and, therefore, it was "best for [him] to cooperate." He said that Wiencek also threatened to put defendant's picture on the news if he did not cooperate. Finally, defendant stated that the entire statement was fabricated by Wiencek and when he told Wiencek that he "never said that," Wiencek replied, "Well you got to sign here, it's best for you just go ahead and sign and maybe we can work something out with the bodies." Defendant agreed to sign because he felt threatened and he had heard that people were framed for murder by the police.

Wiencek, on the other hand, testified that he never asked defendant about the homicides or told defendant that Wiencek planned to contact the homicide unit. He also denied telling defendant he was going to "put him on the news." Instead, Wiencek testified that defendant said he wanted to make a statement. He said that defendant was later given the statement to read over and correct and that defendant made one correction.

Wiencek stated that he did not contact the Homicide Section until after this interview. He knew that Officer Joseph Abdella was investigating sexually motivated homicides of prostitutes in the neighborhood. Abdella interviewed defendant the next afternoon at 4:40 p.m.. Abdella testified that defendant was "very cooperative" and that defendant read and initialed his rights. Finally, Abdella attested that defendant denied any knowledge of the murders but acknowledged that he frequented prostitutes on the east side of Detroit. He told Abdella that he does not assault them but frequently takes his money back if they mistreat him.

The trial court concluded that defendant "freely, knowingly and voluntarily gave and signed" the statement based on the court's credibility assessment after listening to and observing defendant's testimony. The court also implicitly concluded that defendant's testimony was not credible with regard to his claims that Wiencek fabricated the statement or threatened defendant

with otherwise avoidable murder charges in return for defendant's signature. Rather, the court concluded "that they were discussing the fact that there were homicides of prostitutes in the general vicinity, and he was being accused of at least one or more assaults on prostitutes [or] that he may be looked at in that regard." However, the court found that defendant was not unduly influenced by this atmosphere.

First, the court's ruling on the voluntariness of defendant's statement largely turned on credibility determinations. We defer to these determinations. *Walters, supra* at 353. Second, we agree that defendant's awareness that he was being considered in other investigations, including investigations of the homicides, does not suggest, under the totality of the circumstances, that the statement was involuntary. Rather, defendant agreed that he was aware of his rights. Most significantly, the content of his statement is directly contrary to his claims regarding Wiencek's threats. Defendant stated that Wiencek "made an agreement like if I sign here, I wouldn't have to worry about the bodies, the murders." However, the statement does not contain any evidence of this purported deal. Rather, defendant's admission to robbing prostitutes, but never to sexually assaulting them or using a weapon, appears to be an intended defense to the assault allegations. Defendant provides no argument regarding why such an admission would be useful to Wiencek.

Accordingly, we compare this case to *People v Emanuel*, 98 Mich App 163, 180-181; 295 NW2d 875 (1980), in which this Court ruled that the defendant's statement was voluntary despite that officers used language that "bordered on being threats" or which could be construed as promises of leniency. In addition to other factors, this Court noted that the defendant was aware that his accomplice had already spoken with police and had likely implicated him in the murder for which he was later charged. *Id.* at 181-182. In his statement, the defendant claimed that the plan was solely that of his accomplice and that the defendant had not believed the accomplice would actually go through with the plan. *Id.* at 169. This Court concluded that factors including the accomplice's statement impelled the defendant's statement more than did the conduct of the officers. *Id.* at 182. Similarly, here, defendant was aware that he had been identified by at least two assault victims as a rapist and that at least one victim stated that he had threatened her with a knife. Moreover, it does not appear that he was confronted with any direct evidence that he had been involved in the murders. Rather, the trial court's determination that the statement was voluntary is supported by the evidence that defendant was impelled by his desire to deflect guilt of the assault charges; this motive was reflected in the content of his statement, in which he denies weapon use and claims that he merely robbed prostitutes after he engaged in sexual activity.

Finally, we note that defendant argues that the threats were coercive, in part, because they occurred in the context of defendant's "medical condition" (defendant appears to have had an infection in both of his feet), "his lack of sleep and the deprivation of food."[1] However,

[1] Defendant testified that he was tired, that he had not slept, and that he had not eaten since 4:00 p.m. or had water since 2:00 a.m. He denied that he was offered food or water by police. He was taking Benadryl and an antibiotic, but he stated that neither "affect[ed" him Wiencek attested that defendant stated that he had not been denied sleep, although he did not say whether he had slept. Wiencek stated that defendant had been given a sandwich and a carton of juice
(continued…)

defendant provides no argument concerning why these claims, even if believed, had a relevant effect on defendant's statement. Rather, defendant's lack of sleep or food appeared to have been the result of his own habits, and the clear import of defendant's argument is that defendant cogently chose to sign the statement because of his fear of Wiencek's threats. Moreover, given that the trial court discredited defendant's testimony concerning Wiencek's threats and offers related to the murder investigation, the fact that defendant was aware of the murder investigation, had an infection, was tired, and may not have eaten, do not alone constitute circumstances which suggest that his statement was involuntary.

III. Scoring of Sentencing Offense Variable 10

Next, defendant argues that resentencing is required because the trial court erred when it scored offense variable 10 ("OV 10"), which addresses exploitation of a vulnerable victim. MCL 777.40. Defendant argues that the court improperly scored 15 points pursuant to MCL 777.40(1)(a) for predatory conduct. Predatory conduct is defined as "preoffense conduct directed at a victim for the primary purpose of victimization." *People v Witherspoon (After Remand)*, 257 Mich App 329, 335; 670 NW2d 434 (2003); *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002), aff'd 470 Mich 305 (2004); MCL 777.40(3)(a). Here, the trial court concluded that defendant engaged in predatory conduct because he picked up the victim based on her job but never intended to pay her.

First, defendant argues that the court erred by applying facts that were not determined by the jury, in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). He notes that that our Supreme Court is currently considering whether *Blakely* applies to Michigan's indeterminate sentencing scheme in *People v Drohan*, 264 Mich App 77; 689 NW2d 750 (2004), lv gtd 472 Mich 881 (2005). However, under MCR 7.215(C)(2), "a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996). Existing law states that *Blakely* does not apply to Michigan's sentencing scheme. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). Accordingly, this argument lacks merit. Second, defendant argues that, regardless, the scoring decision was made in error because the fact that he did not intend to pay for the victim's services does not constitute predatory or preoffense conduct.

A. Standard of Review

This Court reviews a trial court's scoring decisions by determining "whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003); *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). We must "affirm sentences within the guidelines range absent an error in scoring the sentencing guidelines or inaccurate information relied on in determining the defendant's sentence." *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000); MCL 769.34(10). We review de novo claims of legal error involving the interpretation or application of the statutory sentencing guidelines. *People v*

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during the interview.

Morson, 471 Mich 248, 255; 685 NW2d 203 (2004); *McLaughlin*, *supra* at 671. Otherwise, review is very limited; a scoring decision will be upheld if there is any evidence to support it. *Hornsby*, *supra* at 468.

B. Analysis

Here, the trial court did not err in concluding that predatory conduct was evinced by picking up a prostitute under the auspices of engaging in a business transaction but with the intent not to pay. The record reflects that defendant said he was seeking a prostitute and discussed payment as an apparent means to invite the victim into his car and convince her to drive to a somewhat isolated block. Accordingly, the trial court had reason to conclude that, before the offense, defendant directed conduct at the victim – by seeking and soliciting her and promising payment – with the primary purpose of later isolating and victimizing her instead of proceeding with the proffered transaction.

We compare, for instance, *People v Apgar*, 264 Mich App 321, 330; 690 NW2d 312 (2004), in which predatory conduct was evident when a defendant invited the victim to accompany him to a store, but instead drove around for at least two hours, forced the victim to smoke marijuana, and later led the victim to a bedroom and shut the door. There, similarly, the defendant solicited the victim with an invitation and instead used the opportunity to isolate her. Significantly, the *Apgar* Court opined that "[b]oth the timing and the location of an assault are factors of predatory conduct before the offense, which conduct includes watching a victim and waiting for any chance to be alone with her at a separate location." *Id.*, citing *Witherspoon*, *supra* at 336. Therefore, we conclude both that there was evidence to support the trial court's scoring decision and that the court did not err when it interpreted "predatory conduct" to include the preoffense conduct in this case. The sentence must be affirmed. MCL 769.34(10).

IV. Jury Selection

Defendant argues that the jury selection process was improper and that reversal is appropriate under MCR 2.511. Defendant claims that the struck jury method was used in violation of MCR 2.511(F). We disagree.

A. Standard of Review

Defendant did not preserve this issue because he failed to object to the method of jury selection employed. A claim that has not been preserved for appeal shall be reviewed for plain error affecting substantial rights under *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Furthermore, prospective jurors may be selected by any fair and impartial method agreed to by the parties. MCR 2.511(A)(4).

B. Analysis

Defendant argues that the struck jury method was employed; however, the record does not reflect the use of this method. Furthermore, the record is devoid of any indication that the defendant disagreed with the method of jury selection employed. Thus, defendant failed to preserve this issue for appeal. Upon review of the record, we are satisfied that Mr. Bethune's rights were not infringed upon by the jury selection method employed by the trial court.

V. Effective Assistance of Counsel

Defendant argues that he was deprived of the effective assistance of counsel. Defendant contends that his counsel deprived him of a fair trial in failing to honor his request to take a polygraph examination. We disagree.

A. Standard of Review

In *People v Pickens*, 446 Mich 298, 521 NW2d 797 (1994), the Supreme Court adopted the test the United States Supreme Court set forth in *Strickland v Washington.* Under the *Strickland* test, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced defendant so as to deny the individual of a fair trial. *Pickens, supra* at 302-303. Defendant did not move for a *Ginther* hearing or a new trial. Therefore, the appropriate review is limited to defense counsel's mistakes that are apparent on the record. *People v Nantelle* 215 Mich App 77, 87; 544 NW2d 667 (1996).

As for prejudice, defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id* at 669. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland, supra* at 694. Essentially, defendant must overcome the presumption that the challenged action was sound strategy. *People v Reed*, 198 Mich App 639, 646; 499 NW2d 441 (1993), aff'd 449 Mich 375; 535 NW2d 496 (1995).

B. Analysis

Defendant argues that his attorney failed to honor his request to take a polygraph examination. As a result, defendant alleges his due process rights were violated as polygraph evidence to support his innocence was not included in his defense. However, there is no absolute right to a polygraph if one is not requested at trial. Furthermore, there is no indication that the defendant requested a polygraph and was denied, or that he moved for a new trial. The referenced communication appears to be limited to private conversations allegedly held between defendant and his attorney. This Court is only able to evaluate mistakes apparent on the record. Here we have no record of these alleged discussions.

Further, even if there were evidence that defendant had requested a polygraph, in Michigan and other jurisdictions, the results of a polygraph examination are inadmissible in evidence because polygraphs are not generally accepted as reliable by the scientific community. *People v Rogers*, 140 Mich App 576; 364 NW2d 748 (1985), *quoting People v Barbara*, 400 Mich 352, 377; 25 NW2d 171 (1977). Defendant's claim of ineffective assistance of counsel must fail because he cannot demonstrate that the outcome of the trial would have changed with the administering and admission of a polygraph test. Defendant has not met his burden of proving that the jury did not have an independent basis for its verdict against him. Instead, even with the addition of the polygraph test, sufficient evidence exists, from testimony of the victim to defendant's own statements, to uphold the defendant's conviction. Failure of counsel to champion a meritless position does not constitute ineffective assistance. *People v Snider* 239 Mich App 393, 425; 608 NW2d 502 (2000). Upon review of the record we are satisfied that

defendant's rights were reasonably and professionally represented by his counsel. Consequently, defendant's argument does not merit reversal or a new trial

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VI. Sufficiency of the Evidence

A. Standard of Review

Finally, defendant argues that the evidence presented at trial was insufficient to support his convictions because the victim's credibility was seriously impeached and because the force or coercion element of CSC III was not established. When addressing a claim of insufficient evidence, we review the record de novo. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We review the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Johnson, supra* at 723; *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

B. Analysis

With regard to defendant's first argument, he notes that the victim was impeached on details such as her description of a sheet which covered the bench seat of defendant's truck, her preliminary examination testimony which inaccurately stated that defendant had a scar on his right cheek rather than his left, and her conflicting testimony concerning whether she went home or kept working after the assault. However, we note that she also accurately described the exterior of defendant's truck as well as several of its interior conditions which were confirmed by police after they impounded it: the seat itself was torn in several places and a white sheet covered it; the knob to unroll the window on the driver's side door was missing; and, regardless of her conflicting statements about the location of defendant's scar, she accurately identified that he had a scar on his cheek. She was also certain that he was the assailant. We also note that sperm cells were detected on the sheet. Most significantly, in appeals challenging the sufficiency of the evidence, questions of witnesses' credibility are left to the trier of fact, not the reviewing court. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997). Here, the jury clearly found that the victim's testimony that she was sexually assaulted, and that the defendant was the assailant, was credible.

Second, however, defendant argues that the jury did not find each element of CSC III because the verdicts, finding defendant guilty of CSC III rather than CSC I, revealed the jury's conclusion that defendant committed the assault without the use of a knife. He contends that the only evidence of force or coercion involved the knife and, therefore, that the absence of a knife necessarily precludes a finding of the force element of CSC III.

Defendant was originally charged with CSC I, for use of a weapon, and the jury was instructed to consider both CSC I and CSC III for each charged offense. The relevant subsections of the CSC I statute require (1) sexual penetration, MCL 750.520b(1), and (2) that "[t]he actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon." MCL 750.520b(1)(e). CSC III requires (1) sexual penetration, (2) accomplished under certain aggravating circumstances including force or coercion. MCL 750.520d(1)(b); *People v Crippen*, 242 Mich App 278, 282; 617 NW2d 760 (2000). Force or coercion "includes but is not limited to" the circumstances listed in MCL

750.520b(1)(f)(i) to (v). MCL 750.520d(1)(b). Here, the most relevant subsection reads: "When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats." MCL 750.520(1)(f)(ii).

Accordingly, we agree with defendant that the relevant difference between CSC I and CSC III in this case is whether defendant was armed with "a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon," MCL 750.520b(1)(e), or, instead, whether defendant merely threatened "to use force or violence on the victim, and the victim believe[d] that [he] ha[d] the present ability to execute these threats." MCL 750.520(1)(f)(ii). Likewise, we agree that the jury's verdicts, therefore, reveal an implicit finding that there was insufficient proof that defendant was armed.

However, first, the jury may have concluded that defendant was not armed, but that the victim *believed* defendant had a knife. Such a conclusion would be insufficient to prove CSC I, but sufficient to prove CSC III. The victim testified that she could feel the "grooves" of the tip of the knife on her throat and that defendant said, "don't move, I'll cut your throat." She further testified that she engaged in sex because she "didn't want to get cut, just as simple as that." However, cross-examination revealed that she had some trouble describing the knife, and defense counsel suggested that her testimony varied regarding whether defendant pulled the knife from under his leg or out of his pocket. Moreover, it was dark outside, and the victim was crying during the ordeal. The jury may have concluded that defendant purported to be armed, that the victim believed he was armed, but that there was not proof beyond a reasonable doubt that he was, in fact, "armed with a weapon or any article" as is required for a conviction of CSC I. MCL 750.520b(1)(e). The CSC I statute explicitly requires the actor to be armed, at a minimum, with some article; the statute does not include circumstances under which the actor is *not* armed but the victim believes that he is. MCL 750.520b(1)(e). Rather, such a finding by the jury would require a finding of CSC III, which includes situations when the actor "threaten[s] to use force . . . and the victim believes that the actor has the present ability to execute these threats." MCL 750.520(1)(f)(ii); MCL 750.520d(1)(b). Accordingly, even if the only proof beyond a reasonable doubt of force or coercion was the threats or conduct related to a non-existent knife, a conviction for CSC III was proper.

Second, a verdict of CSC III is not precluded even if the jury's verdict represents their skepticism about the entirety of the victim's testimony regarding the existence of the knife and her belief of threats involving a knife. Force or coercion "includes but is not limited to" the circumstances listed in subsections (1)(f)(i) to (v) of the CSC I statute. MCL 750.520d(1)(b); MCL 750.520b(1)(f)(i) to (v). "Force or coercion is not limited to physical violence but is instead determined in light of all the circumstances." *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992). "Coercion may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. [Black's Law Dictionary (5th ed.), 234.]" *People v Premo*, 213 Mich App 406, 410-411; 540 NW2d 715 (1995) (brackets in original).

Here, some threats were arguably not directly related to a potential knife. For instance, the victim testified that defendant said, at one point, "b----, don't try to - - don't scream, shut up, just be quiet." The two were also parked in a poorly lit, somewhat isolated area, and the victim

testified that her inside door panel, including the door handle, was missing at the time of the assault. She said that, when defendant finally let her out of the truck, he reached under a panel to open the door. A police officer also testified that that the knob or button used to unlock the passenger door was not the original manufacturer's knob, which was "mushroomed shape" and easy to unlock. Rather, it had been replaced with a new knob that was smooth and more difficult to open; such knobs had originally been designed as anti-theft devices because they make it difficult to unlock the door with a coat hanger. The knob on the driver's side was taller with a larger "grab area." These circumstances were sufficient for a jury to find that the victim was coerced, regardless of the jury's conclusions regarding the lack of evidence of a knife. Therefore, the evidence was sufficient to convict defendant of CSC III.

Affirmed.

/s/ Jane E. Markey
/s/ Bill Schuette
/s/ Stephen L. Borrello